# Mysterious Steve Jobs emails hang over Apple trial

June 18 2013, by John Biers

The late Steve Jobs took center stage Monday in the latest twist in the Apple antitrust trial on ebooks. A federal court attempted to plumb the meaning of a series of unsent emails Jobs addressed to Eddy Cue, an Apple senior vice president assigned with negotiating ebook contracts with major publishers in late 2009 and early 2010 before the launch of the iPad.

Even though the emails were never sent, government prosecutors argue that they help establish a pattern of Apple serving as a "ringleader" in a conspiracy with the publishers to force the retail book industry to adopt higher prices of ebooks.

The government contends that Apple forced publishers to change their pricing system with Amazon, resulting in higher ebook prices across the industry and costing consumers hundreds of millions of dollars.

Apple maintains that it was indifferent to Amazon's contracts with the publishers and that higher ebook prices were set by publishers, not Apple.

All of the draft emails responded to a message from Cue outlining the emerging price of Apple ebooks, which would be $12.99 or $14.99, up from the $9.99 Amazon had sold for bestsellers.

In most of the drafts, dated January 14, 2010, Jobs is seen picking over the impact of the emerging deal between Apple and the publishers,

according to testimony.

This included the effects of an Apple "most favored nation" (MFN) provision requiring publishers to make available to Apple any ebook offered on another retailer for the same price.

The bombshell was a draft note to Cue in which Jobs said, "I can live with this as long as they move Amazon to the agent model too for new releases for the first year."

"If they don't, I'm not sure we can be competitive."

The Amazon note appears to be the last draft email in the series, said Cue. It is also the only one in the series signed by Jobs.

US Justice Department lawyer Lawrence Buterman depicted Jobs's draft Amazon email as part of a pattern of Apple demanding publishers to change their terms from a "wholesale" model in which retailers set price to an "agency" model in which publishers set price but guaranteed booksellers a 30 percent commission.

The government contends this shift led to higher ebook prices.

Buterman also pointed to a January 4 letter from Cue to the publishers demanding that all publishers shift their other retailers to the agency model.

Cue said that letter was an initial proposal before he understood the business and realized that Apple could not impose its model on other retailers.

Apple dropped the requirement on other retailers going to agency as soon as it developed the MFN provision, which guaranteed it could

compete with Amazon and others, Cue said.

US District Judge Denise Cote joined prosecutors in repeatedly questioning Cue about the draft emails by Jobs.

The emails suggest Jobs was confused about how the MFN provision worked, Cue told Cote.

"Steve would never send an email if he wasn't sure about it," Cue said. "It looks like he's struggling."

After signing with Apple, the five publishers demanded to shift Amazon to the agency model. Apple maintains that it had nothing to do with Amazon's negotiations with the publishers.

Some publishers have told the court that they decided to shift Amazon to agency because of the Apple MFN provision. Otherwise, they would have been forced to keep selling bestsellers at $9.99. The publishing industry viewed the $9.99 price as eroding the value of all books.

Cote questioned whether Apple also sought higher prices.

"There's another way to read this," Cote said. "There's some concern at Apple about profitability at $9.99, even with the 30 percent commission."

But Cue said "there's absolutely zero chance of that" because Apple has learned to make money with its commission no matter the price of a retail good. Apple was indifferent to book price, Cue said.

Earlier in Monday's testimony, Cue disputed that Apple's entry made all books more costly.

Rather, Apple made possible the sale of ebooks that publishers had delayed to Amazon in a practice known as "windowing," because of dissatisfaction with the pricing model.

"We didn't raise prices for books that weren't available," Cue said.

But Cue, in response to questions from Buterman, acknowledged that some ebook prices did go up.

Cue admitted that the day of the iPad launch, a memoir by the late US senator Edward Kennedy, "True Compass," was not windowed and that Apple was selling the book for $14.99, while it retailed on Amazon for $9.99.

"For that book, that's correct," said Cue, who concluded two days of testimony Monday.

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